

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING
A JUDGE: CYNTHIA A. HOLLOWAY
NO. 00-143

Florida Supreme Court
Case No: SC00-2226

**RESPONSE TO JUDICIAL QUALIFICATIONS COMMISSION'S MOTION IN
OPPOSITION TO JUDGE CYNTHIA A. HOLLOWAY'S MOTION TO COMPEL**

COMES NOW the Respondent, CYNTHIA A. HOLLOWAY, by and through her undersigned counsel, and responds to the JUDICIAL QUALIFICATIONS COMMISSION's (JQC) Motion In Opposition by saying as follows to the correspondingly numbered arguments advanced by the JQC:

I. The Hearing Panel's Order denying Judge Holloway's Motion to Compel does not automatically give rise to review before this Court.

Pursuant to provisions of Article IV, §12 this Court has original jurisdiction of an action involving judicial discipline. See also in re: *Graziano* 696 So.2d 744 (Fla. 1997) wherein the Court identified its ultimate power and responsibility in a judicial disciplinary case. Therefore, the JQC's argument that Respondent's Motion should be denied because it is not an appealable non-final Order misses the mark. Under Rule 9.030 (a)(c), this Court may issue all writs necessary to the complete exercise of its jurisdiction. That is exactly what the Respondent is asking the Court to do insofar as requiring discovery of witness summaries used in determining the existence of probable cause as to the formal charges made against Judge Holloway.

Furthermore, the JQC fails to acknowledge (and in fact, overlooks) the refusal of one of the witnesses to speak with counsel for Judge Holloway; certainly this witness is not

“easily accessible” as referenced by the JQC’s argument

II. The Requested Documents Were Prepared In Anticipation of Litigation and are Protected by the Work Product Doctrine

When the JQC misapprehends the argument advanced by the Respondent insofar as the requested witness summaries. Rule 12 (b) of the Judicial Qualifications Commission has been interpreted by this Court to require full access to the evidence upon which formal charges were based. In re *Graziano*, *supra*. at pg. 751.

The affidavit filed in support of the JQC ‘s position clearly documents that the typed summaries which are at the center of this controversy were provided to General Counsel for the JQC as well as the investigative panel of the JQC for use in determining the existence of probable cause for the formal charges against Judge Holloway. In this regard, see the Affidavit of the JQC investigator (Robert W. Butler) wherein he acknowledges in Paragraph 5 of said Affidavit the use of these witness summaries.

Rule 12 of the Judicial Qualifications Commission clearly indicates a departure from the Florida Rules of Civil Procedure (and the case law interpreting same) with regard to a judicial investigation. How can Respondent take full advantage of Rule 12(b) discovery when the JQC unilaterally determines what is discoverable?

III. The Florida Rules of Civil Procedure shall apply in all proceedings before the Hearing Panel

Respondent’s reply to this argument has been addressed in the previous response. Factually, Respondent would again point out the refusal of at least one witness to talk to Respondent’s counsel.

IV. The JQC's Investigative Witness Summaries Are Not Statements as Defined by Rule 1.290(b)(3)

Respondent relies on the reply previously made in response to Argument II. This Rule of Civil Procedure is not applicable given the clear language of Rule 12(b) of the Judicial Qualifications Commission. As previously urged in Respondent's Motion To Compel, Respondent is not seeking a waiver; Respondent is merely requesting discovery to which she is entitled under both the Rule and this Court's interpretation of same in *Graziano*.

V. The JQC Has Fully Complied With Its Obligations Pursuant to Rule 12(b) of the Judicial Qualifications Commission Rules

The Respondent respectfully disagrees with the position that Special Counsel has taken insofar as her response to Respondent's 12(b) requests. Throughout the pleadings before both the Hearing Panel and this Court, the precepts of *Graziano* have not been acknowledged. There is no other way to interpret this Court's prior decision regarding full access to the evidence upon which formal charges are based than to require production of the witness summaries at issue.

WHEREFORE, the Respondent, CYNTHIA A. HOLLOWAY, hereby responds to the JQC's Motion In Opposition and respectfully request this Honorable Court take her request under advisement, enter an Order requiring production of the reports and witness summaries which form the basis of the charges against Judge Holloway and all other such relief which this Court deems appropriate and equitable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to the following: The Honorable Thomas B. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; Beatrice A. Butchko, Esquire, KAYE, ROSE & MALTZMAN, LLP, One Biscayne Tower, Suite 2300, 2 South Biscayne Blvd., Miami, FL 33131; John R. Beranek, Esquire, General Counsel, Ausley & McMullen, Washington Square Building, 227 Calhoun Street, P. O. Box 391, Tallahassee, Florida 32302 and Honorable James R. Jorgenson, Chair, Hearing Panel, Third District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716.

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